

EXPOSURE DRAFT

(Prepared by Parliamentary Counsel's Office)

Infrastructure Canberra Bill 2009

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Infrastructure Canberra Bill 2009

A Bill for

An Act to establish the Canberra infrastructure plan, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Part 1 Preliminary

1 Name of Act

This Act is the *Infrastructure Canberra Act 2009*.

2 Commencement

This Act commences on the day after its notification day.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

3 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act.

Note 2 A definition in the dictionary applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

4 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

5 Objects of Act

The main objects of this Act are—

- (a) to provide a long-term approach for identifying infrastructure priorities to meet the demands of future population growth in the ACT; and
- (b) to establish a plan for that purpose; and
- (c) to establish a commission and appoint a commissioner to monitor and report on the plan; and
- (d) to establish an independent board with appropriate expertise to advise on the commission's functions.

6 Territory plan

This Act does not permit the commissioner to do anything, or authorise the doing of anything, that is inconsistent with the territory plan.

7 Appropriate Legislative Assembly committee

- (1) The Speaker may nominate a standing committee of the Legislative Assembly to be the appropriate committee for this Act.
- (2) If no nomination under subsection (1) is in effect, the appropriate committee is the standing committee of the Legislative Assembly responsible for the consideration of planning issues.

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Part 2 Canberra infrastructure plan

8 Preparation of infrastructure plan

- (1) The Minister must prepare a Canberra Infrastructure Plan that applies to the ACT.
- (2) In preparing the infrastructure plan, the Minister must consider the following factors:
 - (a) whole-of-life-cycle costs for constructing, maintaining and decommissioning public assets;
 - (b) the scope for technological innovation in building and maintaining infrastructure;
 - (c) environmental sustainability including recycling of materials, waste management and efficient consumption of resources;
 - (d) the supply of labour and training requirements necessary to build and maintain infrastructure;
 - (e) regulatory reform including simplification of government administrative procedures to encourage private investment;
 - (f) availability of funding, including funding from the private sector and the Commonwealth;
 - (g) the economic impact of infrastructure;
 - (h) the national capital plan, the territory plan and other ACT government plans.
- (3) The infrastructure plan is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

9 Contents of infrastructure plan

- (1) The infrastructure plan must include—
- (a) a statement about how the need for and priority of infrastructure projects are to be assessed and developed; and
 - (b) the following categories for infrastructure investment:
 - (i) health and community services;
 - (ii) education and training;
 - (iii) roads, car parking and cycle paths;
 - (iv) public transport;
 - (v) water supply and sustainability;
 - (vi) electricity, gas and alternative energy;
 - (vii) communications including broadband;
 - (viii) interstate freight and import/export;
 - (ix) sporting facilities;
 - (x) cultural and tourism facilities;
 - (xi) public places;
 - (xii) waste management;
 - (xiii) wastewater management, including stormwater and sewerage;
 - (xiv) the city centre and town centres identified in the territory plan.

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- (2) The infrastructure plan may include anything else the Minister considers appropriate.
- (3) The infrastructure plan may prioritise infrastructure projects.

Part 3 **Canberra infrastructure commission**

Division 3.1 **Establishment and functions**

10 **Establishment of Canberra Infrastructure Commission**

The Canberra Infrastructure Commission is established.

11 **Functions of commission**

The commission has the following functions:

- (a) to advise the Minister on the preparation of the infrastructure plan;
- (b) to consult the community about infrastructure priorities;
- (c) to monitor and report on the progress of the infrastructure plan;
- (d) to oversee the state of infrastructure in the ACT;
- (e) to refer appropriate infrastructure projects to the auditor-general for audit;
- (f) to report annually to the appropriate Legislative Assembly committee;
- (g) to publish data that helps to inform the debate on infrastructure;

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- (h) to exercise any other function given to the commission under this Act or any other territory law.

Note 1 A provision of a law that gives a function to an entity also gives the entity the powers necessary and convenient to exercise the function (see Legislation Act, s 196).

Note 2 Section 7 sets out what is the appropriate Legislative Assembly committee.

12 Ministerial direction

- (1) Except as provided by this or any other territory law, the commission is not subject to the direction or control of the Chief Minister.
- (2) The Chief Minister may give a direction to the commission, but only—
- (a) after the Chief Minister has consulted with the commissioner; and
 - (b) a direction of a general nature and not in relation to a particular issue.
- (3) A direction is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

- (4) The Chief Minister must present a direction to the Legislative Assembly within 5 sitting days after the notification of the direction.

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Division 3.2 Canberra infrastructure commissioner

13 Appointment of infrastructure commissioner

- (1) The Chief Minister must appoint a person, other than a public servant, to be the Canberra Infrastructure Commissioner.

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 In particular, an appointment may be made by naming a person or nominating the occupant of a position (see Legislation Act, s 207).

- (2) However, the Chief Minister must not appoint a person as commissioner unless satisfied that the person has the experience or expertise necessary to exercise the functions of the commissioner.
- (3) The commissioner must be appointed for not longer than 5 years.

Note A person may be reappointed to a position if the person is eligible to be appointed to the position (see Legislation Act, s 208 and dict, pt 1, def *appoint*).

- (4) The conditions of appointment of the commissioner are the conditions agreed between the Chief Minister and the commissioner, subject to any determination under the *Remuneration Tribunal Act 1995*.

14 Commissioner's functions

The commissioner has the following functions:

- (a) to exercise functions for the commission;
- (b) to exercise any other function given to the commissioner under this Act or any other territory law.

15 Ending commissioner's appointment

- (1) The Chief Minister may end the commissioner's appointment—
 - (a) if the commissioner contravenes a territory law; or
 - (b) for misbehaviour; or
 - (c) if the commissioner becomes bankrupt or personally insolvent; or
 - (d) if the commissioner is convicted, in the ACT, of an offence punishable by imprisonment for at least 1 year; or
 - (e) if the commissioner is convicted outside the ACT, in Australia or elsewhere, of an offence that, if it had been committed in the ACT, would be punishable by imprisonment for at least 1 year.
- (2) However, before ending the commissioner's appointment under subsection (1) (d) or (e) the Chief Minister must be satisfied that the conviction affects the commissioner's suitability to be commissioner.
- (3) The Chief Minister must end the commissioner's appointment—
 - (a) if the commissioner is absent for 14 consecutive days or for 28 days in any 12-month period, otherwise than on approved leave; or
 - (b) for physical or mental incapacity, if the incapacity substantially affects the exercise of the commissioner's functions.

Note A person's appointment also ends if the person resigns (see Legislation Act, s 210).

Division 3.3 Staff and consultants of commission

16 Staff of commission

- (1) The commission staff must be employed under the *Public Sector Management Act 1994*.
- (2) The commissioner has all the powers of a chief executive in relation to the staff of the commission as if the staff were employed in a department under the control of the commissioner.

17 Consultants of commission

- (1) The commissioner may engage consultants for this Act.
- (2) Consultants are to be engaged on terms decided by the commissioner.
- (3) However, this section does not give the commissioner a power to enter into a contract of employment.

18 Delegation

The commissioner may delegate the commissioner's functions under this Act to—

- (a) a member of the staff of the commission; or
- (b) a person engaged by the commissioner under section 17.

Note For the making of delegations and the exercise of delegated functions, see the Legislation Act, pt 19.4.

Part 4 Canberra infrastructure board

Division 4.1 Establishment and functions of board

19 Establishment of board

The Canberra Infrastructure Board is established.

20 Board members

- (1) The board has at least 5, but not more than 9, members.
- (2) The commissioner is a member of the board.

21 Infrastructure board's functions

The board has the function of giving advice to the commissioner on anything relevant to the commissioner's functions.

22 Constitution of board

- (1) The Chief Minister must appoint the members of the board.

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see Legislation Act, div 19.3.3).

- (2) The Chief Minister must ensure that the following areas of experience or expertise are represented among the members appointed:
 - (a) engineering;
 - (b) architecture;
 - (c) construction, including residential construction;

- (d) planning, including environmental planning;
 - (e) community welfare;
 - (f) economics.
- (3) A member must be appointed for not longer than 3 years.
- Note* A person may be reappointed to a position if the person is eligible to be appointed to the position (see Legislation Act, s 208 and dict, pt 1, def *appoint*).
- (4) The conditions of appointment of a member are the conditions agreed between the Chief Minister and the member, subject to any determination under the *Remuneration Tribunal Act 1995*.

23 Appointment of chair and deputy chair

- (1) The Chief Minister may appoint a chair and a deputy chair for the board.
- Note 1* For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.
- Note 2* Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see Legislation Act, div 19.3.3).
- (2) However, the Chief Minister must not appoint the commissioner as chair or deputy chair.
- (3) The Chief Minister must try to ensure that the board always has a chair and deputy chair.

24 Ending board member appointments

- (1) The Chief Minister may end the appointment of a member, other than the commissioner—
- (a) if the member contravenes a territory law; or
 - (b) for misbehaviour; or

- (c) if the member becomes bankrupt or personally insolvent; or
- (d) if the member is convicted, in the ACT, of an offence punishable by imprisonment for at least 1 year; or
- (e) if the member is convicted outside the ACT, in Australia or elsewhere, of an offence that, if it had been committed in the ACT, would be punishable by imprisonment for at least 1 year; or
- (f) if the member contravenes section 28 (Disclosure of interests by board members); or
- (g) if the member exercises the member's functions other than in accordance with section 25 (Honesty, care and diligence of board members).

Note The commissioner's appointment may be ended under s 15.

- (2) However, before ending the member's appointment under subsection (1) (d) or (e) the Chief Minister must be satisfied that the conviction affects the member's suitability to be a member.
- (3) The Chief Minister must end the member's appointment—
 - (a) if the member is absent from 3 consecutive meetings of the board, otherwise than on approved leave; or
 - (b) for physical or mental incapacity, if the incapacity substantially affects the exercise of the member's functions; or
 - (c) if the member contravenes section 26 (Conflict of interest).

- (4) The Chief Minister may end the appointment of the member (the *member concerned*) if the board tells the Chief Minister in writing that it has resolved, by a majority of the members, to recommend to the Chief Minister that the member's appointment be ended.

Note A person's appointment also ends if the person resigns (see Legislation Act, s 210).

- (5) The board may pass a resolution mentioned in subsection (4) only if—
- (a) at least 21 days written notice of the intention to consider the proposed resolution has been given to the member concerned; and
 - (b) the member concerned has been given an opportunity to make submissions and present documents to a meeting of the board; and
 - (c) the board has considered any submission or document presented to the board as mentioned in paragraph (b).
- (6) The board's minutes in relation to a resolution under subsection (4) must include—
- (a) a summary of any submissions made by the member concerned; and
 - (b) a copy of any documents presented by the member concerned.

25 Honesty, care and diligence of board members

A member must, in exercising the member's functions, exercise the degree of honesty, care and diligence required to be exercised by a director of a corporation in relation to the affairs of the corporation.

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26 Conflict of interest

A member must take all reasonable steps to avoid being placed in a position where a conflict of interest arises in the exercise of the member's functions.

27 Agenda to require disclosure of interest item

The agenda for each meeting of the board must include an item requiring any material interest in relation to an issue to be considered at the meeting to be disclosed at the meeting.

28 Disclosure of interests by board members

- (1) If a member has a material interest in an issue being considered, or about to be considered, by the board, the member must disclose the nature of the interest at a board meeting as soon as practicable after the relevant facts come to the member's knowledge.
- (2) The disclosure must be recorded in the board's minutes and, unless the board otherwise decides, the member must not—
 - (a) be present when the board considers the issue; or
 - (b) take part in a decision of the board on the issue.
- (3) In this section:

associate, of a person, means—

 - (a) the person's business partner; or
 - (b) a close friend of the person; or
 - (c) a family member of the person.

executive officer, of a corporation, means a person, by whatever name called and whether or not the person is a director of the corporation, who is concerned with, or takes part in, the corporation's management.

indirect interest—without limiting the kinds of indirect interests a person may have, a person has an *indirect interest* in an issue if any of the following has an interest in the issue:

- (a) an associate of the person;
- (b) a corporation, if the corporation has not more than 100 members and the person, or an associate of the person, is a member of the corporation;
- (c) a subsidiary of a corporation mentioned in paragraph (b);
- (d) a corporation, if the person, or an associate of the person, is an executive officer of the corporation;
- (e) the trustee of a trust, if the person, or an associate of the person, is a beneficiary of the trust;
- (f) a member of a firm or partnership, if the person, or an associate of the person, is a member of the firm or partnership;
- (g) someone else carrying on a business, if the person, or an associate of the person, has a direct or indirect right to participate in the profits of the business.

material interest—a board member has a *material interest* in an issue if the member has—

- (a) a direct or indirect financial interest in the issue; or
- (b) a direct or indirect interest of any other kind if the interest could conflict with the proper exercise of the member's functions in relation to the board's consideration of the issue.

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29 Reporting disclosed interests to Chief Minister

- (1) Not later than 3 months after the day an interest is disclosed under section 28, the chair of the board must report to the Chief Minister in writing about—
 - (a) the disclosure; and
 - (b) the nature of the interest disclosed; and
 - (c) any decision by the board under section 28.
- (2) The chair must also give the Chief Minister, not later than 31 days after the end of each financial year, a statement that sets out the information given to the Chief Minister in reports under subsection (1) that relate to disclosures made during the previous financial year.
- (3) The Chief Minister must make a statement about the report to the relevant committee of the Legislative Assembly not later than 31 days after the day the Chief Minister receives the statement.
- (4) In this section:
relevant committee means—
 - (a) a standing committee of the Legislative Assembly nominated by the Speaker for subsection (3); or
 - (b) if no nomination under paragraph (a) is in effect—the standing committee of the Legislative Assembly responsible for public accounts.

Division 4.2 Board meetings

30 Time and place of board meetings

- (1) Meetings of the board are to be held when and where it decides.
- (2) However, the board must meet at least once every 3 months.
- (3) The chair—
 - (a) may at any time call a meeting of the board; and
 - (b) must call a meeting if asked by the Chief Minister or at least 2 other members.
- (4) The chair must give the other members reasonable notice of the time and place of a meeting called by the chair.

31 Presiding member at meetings

- (1) The chair presides at all meetings at which the chair is present.
- (2) If the chair is absent, the deputy chair presides.
- (3) If the chair and the deputy chair are absent, the member chosen by the members present presides.

32 Quorum at meetings

Business may be carried on at a meeting of the board only if a majority of the members appointed are present.

33 Voting at meetings

- (1) At a meeting of the board each member has a vote on each question to be decided.

- (2) A question is decided by a majority of the votes of the members present and voting but, if the votes are equal, the member presiding has a deciding vote.

34 Conduct of meetings etc

- (1) The board may conduct its proceedings (including its meetings) as it considers appropriate.
- (2) A meeting may be held using a method of communication, or a combination of methods of communication, that allows a board member taking part to hear or otherwise know what each other member taking part says without the members being in each other's presence.

Examples

a phone link, a satellite link, an internet or intranet link

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) A board member who takes part in a meeting conducted under subsection (2) is taken, for all purposes, to be present at the meeting.
- (4) A resolution is a valid resolution of the board, even if it is not passed at a meeting of the board, if all members agree to the proposed resolution in writing or by electronic communication.

Example—electronic communication

email

- (5) The board must keep minutes of its meetings.

Part 5 Reporting and referral

35 Commissioner to give report to Legislative Assembly

- (1) The commissioner must report to the appropriate Legislative Assembly committee about the commission's operations and functions for each financial year including the following:
 - (a) progress in relation to the infrastructure plan;
 - (b) the number of referrals to the auditor-general the commissioner has made under section 39;
 - (c) anything the Chief Minister directs the commissioner to report on.

Note Section 7 sets out what is the appropriate Legislative Assembly committee.

- (2) The commissioner must give the report to the appropriate Legislative Assembly committee not later than 15 August following the financial year.
- (3) The commissioner may at any time prepare a report for the appropriate Legislative Assembly committee on any matter arising in connection with the exercise of the commissioner's functions.

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36 Commissioner to give mid-year review

- (1) The commissioner must prepare a mid-year review of infrastructure projects for each financial year.
- (2) The commissioner must give the mid-year review to the appropriate Legislative Assembly committee not later than 15 February in the financial year.

Note Section 7 sets out what is the appropriate Legislative Assembly committee.

37 Commissioner's annual report

A report prepared by the commissioner under the *Annual Reports (Government Agencies) Act 2004* for a financial year must include—

- (a) a copy of any direction given under section 12 (Ministerial direction) during the year; and
- (b) a statement by the commissioner about action taken during the year to give effect to any direction given (whether before or during the year) under that section.

38 Reporting sensitive information

- (1) The commissioner must not include information in a report for the appropriate Legislative Assembly committee if the commissioner is of the opinion that the disclosure of the information would be contrary to the public interest because the disclosure could—
 - (a) be an unreasonable disclosure of personal information about a person; or
 - (b) disclose a trade secret; or

- (c) disclose information (other than a trade secret) having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed; or
- (d) be an unreasonable disclosure of information about the business, commercial or financial interests or affairs of an entity; or

Note **Entity** includes a person (see Legislation Act, dict, pt 1).

- (e) prejudice the investigation of a contravention of a law; or
 - (f) prejudice the fair trial of a person; or
 - (g) prejudice relations between the ACT government and another government.
- (2) However, the commissioner may include in the report information mentioned in subsection (1) if the commissioner is satisfied that the substance of the information is public knowledge.
 - (3) If, under subsection (1), the commissioner omits information from a report for the appropriate Legislative Assembly committee, the commissioner may prepare a special report for the public accounts committee that includes the information.
 - (4) The commissioner must give the special report to the presiding member of the public accounts committee.
 - (5) The presiding member must present the special report to the public accounts committee.
 - (6) A special report presented to the public accounts committee is taken for all purposes to have been referred to the committee by the Legislative Assembly for inquiry and any report that the committee considers appropriate.

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(7) In this section:

public accounts committee means the committee of the Legislative Assembly whose functions include the examination of financial statements for the Territory, a department or a territory authority.

39 Referral to auditor-general

(1) The commissioner may refer an infrastructure project to the auditor-general for audit if—

(a) the project—

- (i) has an initial total value of \$10 million or more; or
- (ii) has a revised total value of \$10 million or more; or
- (iii) is declared by the Chief Minister to be an infrastructure project to which this section applies; and

(b) the commissioner is satisfied that it is in the public interest to refer the project for audit.

(2) A declaration is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

Part 6 Miscellaneous

40 Protection from liability

- (1) An official is not civilly liable for anything done or omitted to be done honestly and without recklessness—
 - (a) in the exercise of a function under a territory law; or
 - (b) in the reasonable belief that the act or omission was in the exercise of a function under a territory law.
- (2) Any civil liability that would, apart from this section, attach to an official attaches instead to the Territory.
- (3) In this section:
official means—
 - (a) the commissioner; or
 - (b) staff of the commission; or
 - (c) a member of the board; or
 - (d) anyone else exercising a function under this Act.

41 Regulation-making power

The Executive may make regulations for this Act.

Note A regulation must be notified, and presented to the Legislative Assembly, under the Legislation Act.

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Dictionary

(see s 3)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- ACT
- appoint
- auditor-general
- bankrupt or personally insolvent
- Chief Minister
- entity
- Executive
- exercise
- financial year
- Legislative Assembly
- national capital plan
- territory plan.

appropriate Legislative Assembly committee means the appropriate committee under section 7.

board means the Canberra Infrastructure Board established under section 19.

commission means the Canberra Infrastructure Commission established under section 10.

commissioner means the Canberra Infrastructure Commissioner appointed under section 13.

infrastructure plan means the Canberra Infrastructure Plan prepared under section 8.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2009.

2 Notification

Notified under the Legislation Act on 2009.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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